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with whatever additional power is included in the "power to dispose of and make all needful rules and regulations" respecting these lands. This clause properly construed should give Congress control over the public lands while they are public lands, but should confer no power over land which has ceased to be a part of the public domain.¹⁸

THREATS TO TAKE THE LIFE OF THE PRESIDENT. — The meaning of the word "threat," as used in the federal legislation of February 14, 1917,¹ obviously differs from the usual legal meaning. In the cases of the statutory offense of threatening a private individual,² extortion,³ robbery by threat,⁴ or the avoidance of instruments or acts as induced by threats,⁵ the menace must be communicated to the threatened person and must be such as at least to influence the mind of a reasonable man. In the case of an assault⁶ the words must in addition import to the reasonable hearer an intention to execute it almost immediately; and hence a threat of harm conditioned upon a future event cannot constitute an assault.⁷ But to interpret the word "threat" as used in this law of Congress to mean a "menace of such a nature as to unsettle the mind of the person on whom it operates, and to take away from his acts that free and voluntary action which alone constitutes consent,"⁸ would de-

41 Fed. 70, 72 (1889); *Minnesota v. Bachelder*, 5 Minn. 223, 235 (1861). Cf. *Van Brocklin v. Tennessee*, 117 U. S. 151 (1885); *Kansas v. Colorado*, 206 U. S. 46 (1906).

¹⁸ The power "to dispose of" includes the power to lease. *United States v. Gratiot*, 14 Pet. (U. S.) 526 (1840).

"[Congress] had no power whatever to enlarge the rights of the vendees of the United States as against rights already vested in prior purchasers. It could in no way authorize any encroachment by the grantees of the United States upon, or injury to, the property of other private parties." Per Sawyer, J., in *Woodruff v. North Bloomfield Min. Co.*, 18 Fed. 753, 771 (1884). Cf. *Wilcox v. Jackson*, 13 Pet. (U. S.) 498, 517 (1839).

¹ The Act provides: "That any person who knowingly and willfully deposits or causes to be deposited for conveyance in the mail or for delivery from any postoffice or by any letter carrier any letter, paper, writing, print, missive, or document containing any threat to take the life of or to inflict bodily harm upon the President of the United States, or who knowingly and willfully otherwise makes any such threat against the President, shall upon conviction be fined not exceeding \$1,000 or imprisoned not exceeding five years, or both." 39 STAT. 919, c. 64.

Constitutionally the Act may be supported on the broad ground of a right in the federal government to punish offenses aimed at its integrity, but certainly on the narrower ground of a right to protect its officers. *In re Neagle*, 135 U. S. 1 (1889). See Bicklé, "The Jurisdiction of the United States over Seditious Libel," 41 Am. L. Reg. (N. S.) 1. In *United States v. Metzendorf*, 252 Fed. 933 (Dist. Ct., Mon., 1918), the indictment failed on the strange ground that it did not state that the alleged threat was uttered of the President in his official character. The court held that Congress had no power to protect its officers in their private capacities. Thus jurisdiction for the murder of a federal official would be made to turn on the motive of the killing.

² *State v. McGee*, 80 Conn. 614, 69 Atl. 1059 (1908).

³ *People v. Williams*, 127 Cal. 212, 59 Pac. 581 (1899).

⁴ *Rex v. Fuller*, Russ. & Ryan's Crown Cases, 408 (1820).

⁵ *Robinson v. Gould*, 11 Cush. (Mass.) 55 (1853).

⁶ *Stephens v. Myers*, 4 Carr. & Payne 349 (1830); *Townsdin v. Nutt*, 19 Kan. 282 (1877).

⁷ *Tuberville v. Savage*, 1 Mod. 3 (1669). Cf. *Commonwealth v. Eyre*, 1 Serg. & R. (Pa.) 347 (1815).

⁸ In *United States v. French* this definition was applied, erroneously, it is believed, to the Act of Feb. 14, 1917. 243 Fed. 785 (So. Dist. Fla., 1917).

prive the Act of serious meaning.⁹ In making it a crime to "threaten to take the life of or inflict bodily harm upon the President," Congress can hardly have intended only to protect the President's peace of mind from a threat personally communicated to him. One court relies on the rule of construction that where a word has had a legal definition the legislature must be taken to have used the word in the sense of that definition, unless a different meaning appears to have been intended.¹⁰ It is submitted that a different meaning is implicit in the words of the Act. Why make it criminal to "*deposit* . . . in any post office" any writing containing such a threat, if communication to the President were necessary?

The federal statute doubtless finds its ancestry in the Statute of Treason,¹¹ which made it criminal "to compass and imagine the death of the King." Under this statute in the fifteenth century two interesting indictments were brought, one against Walter Walker¹² and the other against Sir Thomas Burdet.¹³ Regarding the former, Lord Campbell relates¹⁴ that Walter Walker kept an inn called the "Crown," and was suspected of taking part in a plot for the restoration of the imprisoned King, Henry VI; but that "there was no witness to speak to any such treasonable conduct, and that the only evidence to support the charge was that the accused had once, in a merry mood, said to his son, then a boy: 'Tom, if thou behavest thyself well, I will make thee heir to the Crown.'" We are told that the prisoner urged that he had never formed any evil design upon the King's life; that he spoke only to amuse his little boy, meaning by his statement that his son should succeed him as master of Crown Tavern. But, according to Lord Campbell, "Mr. Justice Billing ruled: 'That the words proved were inconsistent with the reverence for the hereditary descent of the Crown which was due from every subject under the oath of allegiance; therefore if the jury believed the witness, about which there could be no doubt as the prisoner did not venture to deny the treasonable language he had used, they were bound to find him guilty.' A verdict was accordingly returned, and the poor publican was hanged, drawn, and quartered."

As to Sir Thomas Burdet, Lord Campbell narrates¹⁵ that he had been out of favor at court; and the King, making a progress in his parts, had rather wantonly entered his park, and hunted and killed a white buck of which Burdet was particularly fond; that "when the fiery knight heard of the affair — he exclaimed: 'I wish that the buck, horns, and all, were in the belly of the man who advised the King to kill it,' or, as some reported, 'were in the King's own belly'"; that on trial for treason Sir Thomas "proved, by most respectable witnesses, that the wish he had rashly expressed applied only to the man who advised the King to kill the deer." But, continues Lord Campbell, "The Lord Chief Justice left

⁹ See a collection of definitions of the word "threat" in *United States v. Jasick*, 252 Fed. 931 (East. Dist. Mich., 1918).

¹⁰ *United States v. French*, note 8, *supra*.

¹¹ 25 EDW. III.

¹² 1 HALE, PLEAS OF THE CROWN, 115; SIR RICHARD BAKER, CHRON. (ed. 1606) 215.

¹³ *Ibid.*; 3 HOLINSHED, CHRON. (London, 1808) 345.

¹⁴ 1 CAMPBELL, LIVES OF THE CHIEF JUSTICES (ed. 1874), 151.

¹⁵ *Ibid.*, 153.

it to a jury to consider what the words were — [telling them that] 'however, the story as told by the witnesses for the Crown was much more probable, for Sovereigns were not usually advised on such affairs, and it had been shown that on this occasion the King had acted entirely out of his own head. — Here the King's death had certainly been in the contemplation of the prisoner; in wishing a violence to be done which must inevitably have caused his death, he imagined and compassed it.' The jury immediately returned a verdict of guilty; and the frightful sentence of high treason, being pronounced, was carried into execution with all its horrors."

Fortunately these two cases have been shown to be incorrectly set forth by Lord Campbell, and do not even form precedents to be overruled.¹⁶ Although the federal courts have been none too lenient in construing the war legislation,¹⁷ coming sometimes perilously near to the standard which was long erroneously attributed to Chief Justice Billing, no fault can, on the whole, be found with their interpretation of the statute here under discussion. In a recent case¹⁸ the requisites for a threat under the Act are well set forth. (1) The words must import to reasonable hearers an intent to harm the President. (2) If oral, they must have been uttered in the hearing of some one.¹⁹ But (3) they need not have been addressed to any one; nor (4) need they have been communicated to the President or have been intended to be communicated to the President. Moreover, under the Act a threat may be conditional. Juries have been permitted to find, or it has been held that they could properly find, the following words to constitute threats: "The President ought to be shot, and I would like to be the one to do it."²⁰ "President Wilson ought to be killed. It is a wonder some one has not done it already. If I had an opportunity, I would do it myself."²¹ "If I got a chance, I would shoot President Wilson."²² "I wish the President were in Hell, and if I had the power I would put him there."²³ The first of these cases presents, as the court intimates, a close question, to be decided in the light of the circumstances and the manner of uttering the words. The other cases are clear.

¹⁶ Edward Foss in "The Judges of England" (London, 1851, pp. 414-16) sharply criticizes Lord Campbell's sharp strictures on Chief Justice Billing, and shows that the flimsy facts of the above cases were not the real support of the charge of treason, and that Lord Campbell's apparent quotations from the court's charges to the jury are pure fiction. He shows that the true facts are these: Walter Walker was charged with "words spoken of the title of Edward when he was proclaimed"; the story of the buck was a figment, and the charge against Burdet was for conspiracy to kill the King and Prince "by casting their nativity, foretelling the speedy death of both, and scattering papers containing the prophecy among the people."

¹⁷ See note, "The Espionage Cases," 32 HARV. L. REV. 417. See also Zechariah Chafee, Jr., "Freedom of Speech," 17 NEW REPUBLIC, No. 211, 66.

¹⁸ *United States v. Stobo*, 251 Fed. 689 (Dist. Ct., Del., 1918).

¹⁹ It was for omitting to allege that the words were uttered in the hearing of any one that the indictment in *United States v. Stobo* failed.

²⁰ *United States v. Stobo*, note 18, *supra*.

²¹ *United States v. Stickrath*, 242 Fed. 151 (So. Dist. Ohio, 1917).

²² *United States v. Jasick*, 252 Fed. 931 (East. Dist. Mich., 1918).

²³ *Clark v. United States*, 250 Fed. 449 (Circ. Ct. App., Fifth Circ., 1918).